

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-16
Table of Allotments,)	RM-11143
FM Broadcast Stations.)	
(Richlands, Shallotte, Topsail Beach, and)	
Wrightsville Beach, North Carolina))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 26, 2005

Released: January 28, 2005

Comment Date: March 21, 2005

Reply Comment Date: April 5, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Sea-Comm, Inc., ("Petitioner"), licensee of FM Station WBNU, Channel 279C3, Shallotte, North Carolina; FM Station WWTB, Channel 280C3, Topsail Beach, North Carolina, and FM Station WBNE, Channel 229A, Wrightsville Beach, North Carolina. Petitioner seeks to amend the FM Table of Allotments by upgrading Channel 279C3, Station WBNU, to Channel 279C2, reallocating Channel 279C2 from Shallotte to Wrightsville Beach, North Carolina, and modifying the license of Station WBNU accordingly.¹ To accommodate the changes for Station WBNU, Petitioner proposes to downgrade Station WWTB from Channel 280C3 to Channel 281A, reallocate Channel 281A from Topsail Beach to Richlands, North Carolina, and modify the license of Station WWTB accordingly. In order to assure that Topsail Beach retains a local aural transmission service, Petitioner proposes to upgrade Station WBNE from Channel 229A to Channel 229C3 and reallocate Channel 229C3 from Wrightsville Beach to Topsail Beach, and to modify the license of Station WBNE accordingly. Petitioner observes that the proposed re-arrangements of the allotments presently occupied by Stations WBNU, WWTB, and WBNE are mutually exclusive with the current allotment of those stations, as required by Section 1.420(i) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² Further, Petitioner states that if the Table of Allotments is amended in the manner requested by its Petition, Petitioner will promptly apply to the Commission for modified authorizations for Petitioner's referenced stations in order to reflect those changes.

2. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of FM allotments consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and*

¹ Shallotte will retain local aural transmission service from FM Station WLTT, Channel 292A, and unlimited time AM Station WVCB, 1410 kHz.

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

*Procedures*³ by providing Richlands, North Carolina, with its first local aural transmission service. Richlands is an incorporated city with a 2000 U.S. Census population of 928 persons. The proposed Channel 281A facility at Richlands would provide a 70 dBu contour over 85.5 percent of the Jacksonville, North Carolina Urbanized Area. Accordingly, Petitioner must provide a *Tuck* showing that Richlands is sufficiently independent of the Jacksonville, North Carolina Urbanized Area that Petitioner's proposal to relocate Station WBNU to Richlands deserves credit for providing the first local service to Richlands.⁴ Petitioner has submitted a *Tuck* analysis to demonstrate that Richlands is independent of the Jacksonville Urbanized Area. We also observe that the proposed upgrade of Channel 279C3 to 279C2 at Shallotte, North Carolina and the reallocation of Channel 279C2 to Wrightsville Beach, North Carolina, would result in Station WBNU's 70 dBu contour covering 84.8 percent of the Wilmington, North Carolina Urbanized area. Nevertheless, since the present Wrightsville Beach FM station, WBNE, Channel 229A, covers 63.2 percent of the Wilmington, North Carolina Urbanized Area with its 70 dBu contour, and since Station WBNU will be replacing WBNE as the sole local aural transmission service to Wrightsville Beach, it is not necessary to require a *Tuck* showing that Wrightsville Beach is independent of the Wilmington, North Carolina Urbanized area. The overall net gain in people served which would result from the three proposed changes in community of license is 135,939 persons. We note that the gain and loss areas involved in all three station moves are well served with five or more radio broadcast stations. Thus, grant of Petitioner's proposal will result in a net gain in persons served, which would also constitute a preferential arrangement of allotments. Because Petitioner's proposal is consistent with the provisions of Section 1.420(i) of the Commission's rules, we shall not accept competing expressions of interest in the use of Channel 279C2 at Wrightsville Beach, Channel 281A at Richlands, and Channel 229C3 at Topsail Beach, or require Petitioner to demonstrate the availability of additional equivalent channels for use by other parties. We observe that none of the proposed changes in community of license would result in the loss of the sole local aural transmission service to any community.

3. This proposal complies with the Commission's technical rules and warrants consideration because it could provide Richlands with its first local aural transmission service as well as providing service to a net gain of 135,939 persons from the three stations. Consistent with the technical requirements of the Commission's rules, Channel 281A, FM Station WWTB, can be allotted to Richlands, North Carolina, utilizing coordinates of 34-49-40 NL and 77-27-30 WL, with a site restriction of 12.9 kilometers (8.0 miles) southeast of Richlands. Moreover, Channel Channel 279C2 can be allotted to Wrightsville Beach, North Carolina, utilizing coordinates of 33-59-56 NL and 77-54-35 WL, with a site restriction of 25.4 kilometers (15.8 miles) southwest of Wrightsville Beach. Lastly, Channel 229C3 can be allotted to Topsail Beach, North Carolina, utilizing coordinates of 34-25-37 NL and 77-38-33 WL, with a site restriction of 7.0 kilometers (4.3 miles) north of Topsail Beach.

³ 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁴ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); see also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (a reallocation proposal that seeks a preference for providing a first local aural transmission service to a community must submit a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area.)

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 202(b), with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Richlands, North Carolina	-----	281A
Shallotte, North Carolina,	279C3, 292A	292A
Topsail Beach, North Carolina	280C3	229C3
Wrightsville Beach, North Carolina	229A	279C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

6. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before March 21, 2005, and reply comments on or before April 5, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

John Griffith Johnson, Jr. Esq.
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004-2400

7. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of

the Commission's Rules.⁵ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

9. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

⁵ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. **Showings Required.** Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. **Cut-off protection.** The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. **Comments and Reply Comments; service.** Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. **Number of Copies.** In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. **Public Inspection of Filings.** All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.